

COPY

STATE OF NEW YORK

CITY OF NEW ROCHELLE

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In the Matter of the Disciplinary

Charges Preferred by,

CAPTAIN KEVIN KEALY

Charging Party,

-against-

POLICE OFFICER JOSEPH POGGIOLI,

Charged Party.

-----x

515 North Avenue

New Rochelle, New York

March 9, 2006

BEFORE: ROBERT PONZINI

Hearing Officer

DOCUSERVE

388 Tarrytown Road

White Plains, New York 10607

(914) 949-4545

1
2 APPEARANCES:
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4
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6
7 LAW OFFICE OF VINCENT TOOMEY

8 Attorneys for the City

9 3000 Marcus Avenue

10 Lake Success, New York 11042

11 BY: KEVIN KEARON, ESQ.,

12 Of Counsel

13 BY: THOMAS J. MARCOLINE, ESQ.
14
15

16 LOVETT & GOULD, LLP

17 Attorneys for the Charged Party

18 222 Bloomingdale Road

19 White Plains, New York 10605

20 BY: JONATHAN LOVETT, ESQ.
21
22

23 ALSO PRESENT:
24

25 Edward Hayes

1 KEVIN KEALY

2 MR. KEARON: Nothing further.

3 THE HEARING OFFICER: We'll take
4 a short recess.

5 (Short recess taken.)

6 THE HEARING OFFICER: We're back
7 on the record. Does the City have any
8 additional witnesses?

9 MR. KEARON: Yes, the City calls
10 Police Officer Joseph Poggioli.

11 JOSEPH POGGIOLI called as a witness on
12 behalf of the Charging Party, having been
13 first duly sworn by the Hearing Officer,
14 testified as follows:

15 THE HEARING OFFICER: Can I have
16 your full name and your business
17 address for the record.

18 THE WITNESS: Police Officer
19 Joseph Poggioli, Jr., 475 North
20 Avenue, New Rochelle.

21 THE HEARING OFFICER: Officer
22 Poggioli, you've been present for the
23 testimony. You've heard my
24 instructions. If you have any
25 questions, don't hesitate to ask me

1 KEVIN KEALY

2 during the course of the proceedings.

3 You may inquire.

4 DIRECT EXAMINATION

5 BY MR. KEARON:

6 Q. Good afternoon, Officer.

7 Directing your attention to April 20,
8 2005, did you work a private duty
9 assignment on Webster Avenue in the City
10 of New Rochelle that day?

11 A. Yes.

12 Q. Did there come a point when you
13 arrived at that location on that job site
14 for the first time?

15 A. Yes.

16 Q. Did there come a point,
17 thereafter, at the end of that private
18 duty assignment that you returned to
19 police headquarters?

20 A. Yes.

21 Q. Did you return to police
22 headquarters at any time in the interim
23 between when you first arrived at the job
24 site and the time you returned back to
25 police headquarters to sign off for that

1 KEVIN KEALY

2 job?

3 A. No, I don't think so.

4 Q. Prior to reporting to that job
5 site, did you enter police headquarters?

6 A. Yes.

7 Q. When you entered police
8 headquarters were you already in uniform
9 or were you still in civilian clothing?

10 A. I was in civilian clothing.

11 Q. Did you get changed in your
12 uniform at police headquarters?

13 A. Yes.

14 Q. When you left for the job site,
15 did you present yourself or attempt to
16 present yourself to the desk officer to
17 sign yourself out?

18 MR. LOVETT: Objection as to
19 form. It is two questions.

20 MR. KEARON: I'll rephrase the
21 question.

22 Q. Did you present yourself to the
23 desk officer to sign out to that
24 private-duty job?

25 A. I don't understand what you mean

1 KEVIN KEALY

2 by "present".

3 Q. Are you familiar with the
4 private-duty log that is supposed to be
5 signed in and out of by an officer going
6 to a private-duty job?

7 A. Yes.

8 Q. On the 20th of April, were you
9 familiar with that log?

10 A. Yes.

11 Q. Did you know that you are
12 supposed to sign yourself out to a job and
13 then when you return from the job sign
14 yourself back in that log?

15 A. Yes.

16 Q. Did you sign yourself out to
17 that job that day?

18 A. Yes.

19 Q. Was that log in the vicinity of
20 the desk officer's desk at the time you
21 did so?

22 A. It was nearby.

23 Q. Was there a desk officer present
24 at the time you signed yourself out?

25 A. I don't recall.

1 KEVIN KEALY

2 Q. Were you aware that there was an
3 obligation for you to present yourself
4 before a desk officer before signing out
5 for your off-duty assignment?

6 A. No one does it.

7 Q. Were you aware that there was a
8 rule and/or regulation that required you
9 to do so whether that rule or regulation
10 was followed by anyone else or not?

11 A. Yes, but it is not a rule that
12 is followed.

13 THE HEARING OFFICER: The answer
14 is yes. He knows that there is a rule.

15 Q. I'm sorry if I misunderstood
16 your answer. Was there someone at the
17 desk when you signed out that day or not?

18 MR. LOVETT: Objection.

19 THE HEARING OFFICER: He said he
20 didn't know.

21 Q. You have no idea one way or
22 another whether there was a desk officer
23 present when you signed out?

24 MR. LOVETT: Objection. Asked
25 three times.

1 KEVIN KEALY

2 THE HEARING OFFICER: Overruled.

3 I'll give him one more chance. It is
4 a hostile witness.

5 A. I don't remember.

6 Q. Would you please take a look at
7 a still excerpt and I will show it to
8 counsel before I show it to the witness
9 from Charging Party 10 in evidence.

10 Would you take a look at that
11 video screen. Would you tell us if that
12 is you depicted in the lower left-hand
13 corner of that video screen?

14 A. I can't tell.

15 Q. I'm going to show you not a
16 single static excerpt, but the video
17 itself and ask you to watch the video and
18 then tell me if the individual depicted
19 walking in in that video is you or not?

20 MR. KEARON: For the record I'm
21 going to play what I believe to be the
22 entire portion of the individual that
23 depicts the individual that has been
24 previously identified as Officer
25 Poggioli from start to finish.

1 KEVIN KEALY

2 If you need to see it a second
3 time, tell me.

4 (Whereupon, the video was
5 played.)

6 Q. Did you have an opportunity to
7 look at that excerpt that I just showed
8 you?

9 A. Yes, I saw it.

10 Q. Are you able to tell me whether
11 or not that individual is you?

12 A. No, I can't.

13 Q. I'll back it up to a different
14 point in the video and show you another
15 still from that video. You see the blue
16 jeans being worn by that individual?

17 A. Yes.

18 Q. Do you own a pair of blue jeans
19 that look like that?

20 A. I own a pair of blue jeans.

21 Q. Do you see the white shoes or
22 sneakers being worn by that individual?

23 A. I don't know if those are shoes
24 or sneakers.

25 Q. That's why I proposed both. Do

1 KEVIN KEALY

2 you see the shoes or sneakers being worn,
3 color white, or at least partial white by
4 that individual?

5 MR. LOVETT: Objection as to
6 form.

7 THE HEARING OFFICER: Overruled.

8 A. Barely.

9 Q. Do you have white shoes or
10 sneakers or did you own white shoes or
11 sneakers as of April 2005?

12 A. No.

13 MR. LOVETT: Objection. That's
14 three questions in one.

15 THE HEARING OFFICER: Well, I'm
16 going to allow it. Overruled.

17 A. No, I don't own a pair of white
18 sneakers or shoes.

19 MR. KEARON: I have nothing
20 further on the video.

21 Q. Would you take a look at what
22 has been marked as Charging Party 12 in
23 evidence, please. I'm directing your
24 attention, please, to the third entry from
25 the bottom, the left side, the name

1 KEVIN KEALY

2 Poggioli appears. Do you see where I'm
3 indicating?

4 A. Yes.

5 Q. Was the name Poggioli written by
6 you?

7 A. Yes.

8 Q. Do you see next to that under
9 assignment, the assignment column it says
10 Coligni and Webster. Was Coligni and
11 Webster written by you?

12 A. Yes.

13 Q. Do you see where it says job
14 hours, 1200 to 1600 hours. Was that entry
15 made by you?

16 A. Yes.

17 Q. Do you see under time out, it
18 says 12 o'clock. Was that entry made by
19 you?

20 A. That entry was made by me.

21 Q. Under time in, it says 1530.
22 Was that entry made by you?

23 A. Yes.

24 Q. Under radio number, it has radio
25 number 116. Was that entry made by you?

1 KEVIN KEALY

2 A. Yes.

3 Q. Did you make all of the entries
4 we just discussed at basically the same
5 time?

6 A. Yes.

7 MR. LOVETT: Objection.

8 THE HEARING OFFICER: Overruled.

9 Q. When did you make those entries,
10 when you were signing out to the job or
11 signing back into the job?

12 MR. LOVETT: Objection. He said
13 the last question, which was absurd,
14 he made all the entries at the same
15 time. So he signed out when he signed
16 in according to Mr. Kearon.

17 THE HEARING OFFICER: That's
18 what the question was, but
19 unfortunately he also said yes.

20 MR. KEARON: Let me please
21 clarify the question.

22 Q. At what hour of the day did you
23 make those entries?

24 MR. LOVETT: Objection. Asked
25 and answered.

1 KEVIN KEALY

2 THE HEARING OFFICER: I think we
3 have to clarify the record here.

4 When you say "entries," the
5 specific entry, the "in" or the "out"?
6 I'm confused.

7 MR. KEARON: The testimony was
8 all the entries were made sequentially
9 or all at the same time?

10 MR. LOVETT: He did not say
11 that.

12 THE HEARING OFFICER: He did not
13 say that.

14 MR. KEARON: I'll clarify it.

15 Q. Did you make these entries
16 basically one after another or at the same
17 time?

18 MR. LOVETT: Objection.

19 MR. KEARON: I'll rephrase it.

20 Q. Please describe the
21 circumstances under which you've made the
22 various entries under which we just
23 discussed?

24 A. When I sign out for an off-duty
25 job, that's the form we use.

1 KEVIN KEALY

2 Q. Did you make those entries at
3 the time you signed out for this job?

4 MR. LOVETT: Objection. Same
5 competency. He couldn't have made all
6 of the entries when he signed out.

7 THE HEARING OFFICER: At the
8 risk of interjecting --

9 MR. KEARON: I apologize.

10 Q. With the exception of the time
11 in entry which indicates 1530, setting
12 that one aside, did you make the other
13 entries at the time that you signed out?

14 A. With the exception of the 1530?

15 Q. Yes.

16 A. Yes.

17 Q. When did you make the 1530
18 entry?

19 A. When I arrived back at police
20 headquarters.

21 Q. Do you see under supervisor out
22 there is no entry in the column next to
23 your name?

24 A. Yes.

25 Q. Does the absence of initials or

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KEVIN KEALY

marking by a supervisor in any way refresh
your recollection as to anyone who was
present at the desk at the time you signed
out?

A. No.

Q. Are you certain that you didn't
make all of these entries at the time for
the first time when you signed back in
from the job?

MR. LOVETT: Objection. Asked
and answered.

THE HEARING OFFICER: Overruled.
He is asking it a little differently.

MR. LOVETT: It is the same
thing.

THE HEARING OFFICER: No. It is
overruled.

A. I'm sorry. Can you repeat that?

Q. Is there any possibility after
having reviewed this record now that
you're mistaken; that in fact all of these
entries were made at a single point in
time when you signed back into the
department from the job?

1 KEVIN KEALY

2 MR. LOVETT: Objection as to
3 form and it is totally hypothetical.
4 Is there any possibility? What is
5 that supposed to mean.

6 THE HEARING OFFICER: Overruled.
7 It is a hostile witness.

8 MR. LOVETT: I'm not talking
9 about hostility. I'm talking about
10 competency.

11 THE HEARING OFFICER: I am going
12 to allow the question.

13 A. You want to know if I signed it
14 all at the same time?

15 Q. Yes.

16 A. No, I didn't sign it at the same
17 time.

18 Q. Would you take a look at Charged
19 Party's B in evidence.

20 A. Yes.

21 Q. What do you recognize it to be?

22 A. It is not a complete overtime
23 slip. Something is missing.

24 Q. Tell me what it is and tell me
25 what is missing?

1 KEVIN KEALY

2 A. I can't tell you what is missing
3 if I don't see it.

4 Q. Tell me generally speaking what
5 kind of document are we looking at?

6 A. It looks like an overtime slip.

7 Q. Do you recognize any writing on
8 that document made by you?

9 A. It is not an overtime slip I
10 would have signed.

11 Q. Do you see the words written by
12 hand down here P.O -- I can't read the
13 letters -- Poggioli, Jr.?

14 A. Yes.

15 Q. Do you see that signature?

16 A. It appears to be.

17 Q. Do you have any reason to
18 believe it is not?

19 A. That overtime slip does not look
20 like a proper overtime slip.

21 Q. In what way does it appear to
22 not be an overtime slip?

23 A. Part of the lettering on top is
24 missing.

25 Q. What portion?

1 KEVIN KEALY

2 A. The whole top line, half of it
3 is missing.

4 Q. Do you see the next printed word
5 officer, someone has handwritten Joseph A.
6 Poggioli, Jr.?

7 A. Yes.

8 Q. Is that your handwriting?

9 A. It appears to be.

10 Q. Is there anything on this
11 document written in hand that appears not
12 to be your handwriting?

13 A. It doesn't look like a proper
14 overtime slip.

15 Q. That's not my question. Are all
16 the handwritten markings on this --
17 withdrawn.

18 Do you remember preparing an
19 overtime slip in connection with your
20 April 20th private-duty assignment?

21 A. Yes.

22 Q. Is this it?

23 A. No.

24 Q. Do you have a copy of the slip
25 that you did prepare?

1 KEVIN KEALY

2 A. No.

3 Q. In what way, if this is not it,
4 does it differ from the one that you did
5 prepare?

6 A. The top line is -- some of the
7 parts is missing. I don't think I would
8 have filled out an overtime slip like
9 that.

10 Q. Are you referring to the line
11 that ends in other assignments up at top?

12 A. I'm referring to the top line.

13 Q. The line I'm pointing to right
14 now (indicating)?

15 A. Yes, half the words are missing.

16 Q. Setting aside the fact that this
17 copy of this overtime slip appears to have
18 cutoff a portion of the top line on this
19 slip, do you have any reason to believe
20 that any of these markings were made by
21 anyone other than you?

22 A. I don't know.

23 Q. Meaning that you have no reason
24 to believe that anyone else did it?

25 A. The overtime slip is not a

1 KEVIN KEALY

2 proper New Rochelle overtime slip. Half
3 of the front line is missing.

4 Q. That's not my question. Did you
5 fill this slip out?

6 A. Not that slip.

7 Q. Is this a copy of the slip that
8 you filled out?

9 A. I don't know.

10 MR. KEARON: Can I have the
11 following document marked as the next
12 Exhibit, Charging Party 22.

13 (Whereupon, Charging Party's 22
14 was marked for identification.)

15 Q. Would you take a look at what
16 has been marked as Charging Party 22 for
17 identification. Tell me if you recognize
18 it please?

19 A. It looks like a New Rochelle
20 Police Department overtime slip.

21 Q. Is it the overtime slip that you
22 filled out in connection with your --

23 MR. LOVETT: Objection. It is
24 obviously a photocopy. It is not an
25 original of anything. It bears some

1 KEVIN KEALY

2 kind of stamp on it that doesn't --

3 MR. KEARON: Take another look.

4 I don't think it is obviously a
5 photocopy. I think it has an original
6 ink mark on it.

7 MR. LOVETT: It is not obvious
8 to me. It says "Special PDP 148.3"
9 on it.

10 Q. Setting aside the markings in
11 the middle of this Charging Party 22 for
12 identification that reads Special PDP
13 148.3, ignoring that section, is that
14 otherwise the overtime slip that you
15 prepared in connection with your
16 assignment that day?

17 MR. LOVETT: Objection.

18 It has got an exhibit tab line
19 on it. It couldn't possibly have an
20 exhibit tab line on it on April 20th,
21 '05.

22 THE HEARING OFFICER: I'll take
23 it. Overruled.

24 A. That looks like a copy.

25 Q. Is that a true copy of the

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KEVIN KEALY

overtime slip that you filled out that day?

A. I couldn't tell.

Q. Take a moment and review the information that appears on that slip. Is the information accurate as to what you reported in connection with your request for payment for overtime work on the 20th of April 2005?

A. I couldn't tell you unless I see the original.

Q. Your name is Joseph A. Poggioli, Jr., correct?

A. Yes.

Q. Your shield number is 5801, correct?

A. No.

Q. What is your shield number?

A. 1021.

MR. LOVETT: Let the record reflect my client is wearing his shield. It does say 1021 on it.

Q. Does this line (indicating), does that appear to be your handwriting to

1 KEVIN KEALY
2 you? On the top third of the document,
3 does that appear to be your print?

4 A. What's the top third of the
5 document?

6 Q. Okay, you see where it says
7 "verified by division commander"?

8 A. Yes.

9 MR. LOVETT: Where is that? You
10 lost me.

11 MR. KEARON: Right here
12 (indicating).

13 Q. Please ignore my last direction
14 and focus your attention to where I'm
15 pointing on this document (indicating)
16 where it says officer's signature. I'm
17 talking about every handwritten marking on
18 this document above that point. I'm not
19 talking about anything below that point.
20 Do we understand each other?

21 A. No, we don't.

22 Q. I'm going to only be asking you
23 questions about handwritten markings made
24 on Charging Party 22 for identification
25 above the preprinted line that says

1 KEVIN KEALY
2 officer's signature. Do you understand
3 what I'm discussing?

4 A. Yes.

5 Q. You're familiar with your own
6 signature, correct?

7 A. Yes.

8 Q. Is that your signature or is
9 that not your signature?

10 MR. LOVETT: Objection. It is
11 not in evidence.

12 THE HEARING OFFICER: Well, he
13 can ask him to identify something even
14 if it is not in evidence for the
15 purpose of admitting.

16 MR. LOVETT: He has got to get
17 authentication of the document which
18 he doesn't have. We can go all the
19 way around the mulberry bush to get
20 everything in, but he has circumvented
21 an elementary rule of evidence, it is
22 not in evidence. You can't ask him
23 about something contained in it that
24 is merely for identification.

25 THE HEARING OFFICER: Overruled.

1 KEVIN KEALY

2 I will allow it.

3 Q. Is this document, this
4 particular request for overtime, a
5 document that is used by the City of New
6 Rochelle Police Department in the regular
7 course of its business?

8 MR. LOVETT: Objection. Asked
9 and answered.

10 THE HEARING OFFICER: I don't
11 believe he asked that question before.
12 Overruled.

13 A. It looks like a copy of an
14 overtime slip.

15 Q. My question is, whether this is
16 a copy or the original overtime slip, is
17 this form of overtime slip generally
18 speaking used by the City of New Rochelle
19 Police Department in connection with their
20 record keeping as it relates to overtime
21 requests on private-duty assignments?

22 MR. LOVETT: Objection as to
23 form. I don't know what that means.

24 THE HEARING OFFICER: I think
25 the question is, is that a form used

1 KEVIN KEALY

2 for overtime in the New Rochelle
3 Police Department?

4 THE WITNESS: It appears to be.

5 THE HEARING OFFICER: You don't
6 know if it is an original or
7 authenticate?

8 THE WITNESS: Exactly.

9 THE HEARING OFFICER: But it
10 appears to be the format?

11 THE WITNESS: It looks like it.

12 Q. My question is whether it is a
13 copy or the original, that's either your
14 original signature or a copy of your
15 original signature?

16 MR. LOVETT: Objection to form.

17 Which is it? Conjunctive,
18 disjunctive?

19 A. It looks like a copy of my
20 signature.

21 Q. Do you see the name Joseph A.
22 Poggioli, Jr., written on here?

23 A. Yes.

24 Q. Does that appear to be your
25 handwriting in print, whether original or

1 KEVIN KEALY

2 a copy?

3 A. Yes.

4 Q. Do you see where it says "third
5 tour," does that appear to be your print
6 handwriting there?

7 A. Yes.

8 Q. Do you see where it says Coligni
9 Avenue and Webster Avenue and below that
10 -- withdrawn.

11 Do you see where it says Coligni
12 Avenue and Webster Avenue. Does that
13 appear to be your print, handwriting?

14 A. Or a copy?

15 Q. Yes, either an original or a
16 copy?

17 A. You didn't say that.

18 Q. Is yes the answer?

19 A. Yes.

20 MR. KEARON: I would offer
21 Charging Party 22 for identification
22 in evidence. I contend it is an
23 original but there is some debate
24 about whether it is an original or
25 copy. But not as an original, a true

1 KEVIN KEALY

2 copy of the overtime slip made by
3 Poggioli at this time.

4 MR. LOVETT: No foundation.

5 THE HEARING OFFICER: I'm not
6 going to allow it in at this time. He
7 hasn't properly identified it.

8 MR. KEARON: Then I would offer
9 it for a different purpose. I would
10 offer it as a point of comparison
11 between a point of what is already in
12 evidence as Charged Party B in
13 evidence, for the purpose of
14 demonstrating that the signatures and
15 handwriting on this document have been
16 identified by this witness as
17 appearing to be his own.

18 MR. LOVETT: Same objection. It
19 is ridiculous.

20 THE HEARING OFFICER: I'm not
21 going to allow it in. If you have a
22 custodian of the records who wants to
23 let it in, then you do have the
24 testimony of him reasonably
25 identifying that it is a signature or

1 KEVIN KEALY
2 a copy of the signature that looks
3 like his, together with the other
4 questions that you asked.

5 MR. KEARON: May I have a moment
6 to consult with my colleague?

7 THE HEARING OFFICER: Yes.

8 (Pause in the proceedings.)

9 MR. KEARON: I have no more
10 questions for Officer Poggioli.

11 THE HEARING OFFICER: Do you
12 have any cross-examination?

13 MR. LOVETT: No.

14 MR. KEARON: I'm prepared to
15 rest. I want to call Captain Kealy
16 back to see if I can put this in. If
17 there is no stipulation, I would like
18 to recall Captain Kealy to have him
19 identify this.

20 THE HEARING OFFICER: You can
21 recall him.

22 KEVIN KEALY, recalled as a witness by
23 and on behalf of the Charging Party,
24 having been previously duly sworn by the
25 Hearing Officer, testified as follows:

1 KEVIN KEALY

2 THE HEARING OFFICER: Captain
3 Kealy has been recalled by the
4 Charging Party, the City of New
5 Rochelle.

6 Captain Kealy, you're still
7 under oath. Mr. Kearon has a few
8 questions for you.

9 CONTINUING REDIRECT EXAMINATION

10 BY MR. KEARON:

11 Q. Captain, would you please take a
12 look at Charging Party 22 for
13 identification. Take a moment to review
14 it and tell me if you recognize it?

15 A. It is the overtime slip
16 submitted for the special-duty job by P.O.
17 Poggioli on the 20th.

18 Q. Are there any markings on that
19 slip that to your knowledge were not there
20 at the time Officer Poggioli submitted
21 that slip?

22 A. Not that that I could recall,
23 no.

24 Q. How about specialty PDP 148.3,
25 what does that mean?

CERTIFICATION

I, Irene Bindel, a Notary Public for
and within the State of New York, do
hereby certify:

That the witness whose testimony as
herein set forth, was duly sworn by me;
and that the within transcript is a true
record of the testimony given by said
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I am
in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 28th day of March, 2006.



Irene Bindel, RPR, CSR

* * *